

Senate Amendment 3108

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1 1 Amend Senate File 344 as follows:
1 2 #1. By striking page 1, line 10, through page 20,
1 3 line 13, and inserting the following:
1 4 <Sec. _____. Section 625A.9, Code 2003, is amended
1 5 to read as follows:
1 6 625A.9 EXECUTION ON UNSTAYED PART OF JUDGMENT ==
1 7 ~~SUPERSEDEAS BOND WAIVED.~~
1 8 1. The taking of the appeal from part of a
1 9 judgment or order, and the filing of a bond ~~as above~~
1 10 ~~directed~~, does not stay execution as to that part of
1 11 the judgment or order not appealed from.
1 12 2. If the judgment or order appealed from is for
1 13 money, such bond shall not exceed any of the following
1 14 amounts, excluding costs:
1 15 a. One hundred percent of the amount of the money
1 16 judgment up to and including one million dollars.
1 17 b. One million dollars plus ten percent of the
1 18 amount above one million dollars, if the amount of the
1 19 money judgment is in excess of one million dollars, up
1 20 to and including one hundred million dollars.
1 21 c. Twenty-five million dollars, if the amount of
1 22 the money judgment is in excess of one hundred million
1 23 dollars.
1 24 3. Upon motion and for good cause shown, the
1 25 district court may stay all proceedings under the
1 26 order or judgment being appealed and permit the state
1 27 or any of its political subdivisions to appeal a
1 28 judgment or order to the supreme court without the
1 29 filing of a supersedeas bond.
1 30 Sec. _____. Section 668.4, Code 2003, is amended to
1 31 read as follows:
1 32 668.4 JOINT AND SEVERAL LIABILITY.
1 33 In actions brought under this chapter, the rule of
1 34 joint and several liability shall not apply to
1 35 defendants ~~who are found to bear less than fifty~~
1 36 ~~percent of the total fault assigned to all parties.~~
1 37 ~~However, a defendant found to bear fifty percent or~~
1 38 ~~more of fault shall only be jointly and severally~~
1 39 ~~liable for economic damages and not for any~~
1 40 ~~noneconomic damage awards.~~
1 41 Sec. _____. Section 668.12, Code 2003, is amended to
1 42 read as follows:
1 43 668.12 LIABILITY FOR PRODUCTS == ~~STATE OF THE ART~~
1 44 ~~DEFENSE DEFENSES.~~
1 45 1. In any action brought pursuant to this chapter
1 46 against an assembler, designer, supplier of
1 47 specifications, distributor, manufacturer, or seller
1 48 for damages arising from an alleged defect in the
1 49 design, testing, manufacturing, formulation,
1 50 packaging, warning, or labeling of a product, a
2 1 percentage of fault shall not be assigned to such
2 2 persons if they plead and prove that the product
2 3 conformed to the state of the art in existence at the
2 4 time the product was designed, tested, manufactured,
2 5 formulated, packaged, provided with a warning, or
2 6 labeled.
2 7 2. Nothing contained in ~~this section~~ subsection 1
2 8 shall diminish the duty of an assembler, designer,
2 9 supplier of specifications, distributor, manufacturer
2 10 or seller to warn concerning subsequently acquired
2 11 knowledge of a defect or dangerous condition that
2 12 would render the product unreasonably dangerous for
2 13 its foreseeable use or diminish the liability for
2 14 failure to so warn.
2 15 3. An assembler, designer, supplier of
2 16 specifications, distributor, manufacturer, or seller
2 17 shall not be subject to liability for failure to warn
2 18 regarding risks and risk-avoidance measures that
2 19 should be obvious to, or generally known by,
2 20 foreseeable product users. When reasonable minds may
2 21 differ as to whether the risk or risk-avoidance

2 22 measure was obvious or generally known, the issues
2 23 shall be decided by the trier of fact.
2 24 4. In any action brought pursuant to this chapter
2 25 against an assembler, designer, supplier of
2 26 specifications, distributor, manufacturer, or seller
2 27 for damages arising from an alleged defect in
2 28 packaging, warning, or labeling of a product, a
2 29 product bearing or accompanied by a warning or
2 30 instruction that is reasonably safe for use if the
2 31 warning or instruction is followed shall not be deemed
2 32 defective or unreasonably dangerous on the basis of
2 33 failure to warn or instruct.

2 34 5. In any action brought pursuant to this chapter
2 35 against an assembler, designer, supplier of
2 36 specifications, distributor, manufacturer, or seller
2 37 for damages arising from an alleged defect in the
2 38 design which allegedly enhanced injuries, or any
2 39 action alleging the crashworthiness of a product,
2 40 evidence of the user's or injured person's fault shall
2 41 be admissible and, subject to the provisions of
2 42 section 668.2, shall be compared if such fault was a
2 43 substantial factor in causing the underlying accident
2 44 or event producing any injury to the claimant,
2 45 including an enhanced injury.

2 46 6. An assembler, designer, supplier of
2 47 specifications, distributor, manufacturer, or seller
2 48 shall not be subject to liability under a theory of
2 49 civil conspiracy unless such persons knowingly entered
2 50 into a conspiracy with an intent to commit an unlawful
3 1 act which causes harm.

3 2 Sec. ____. Section 668A.1, subsection 1, Code 2003,
3 3 is amended to read as follows:

3 4 1. In a trial of a claim involving the request for
3 5 punitive or exemplary damages, the court shall
3 6 instruct the jury to answer special interrogatories
3 7 or, if there is no jury, shall make findings,
3 8 indicating all of the following:

3 9 a. Whether, by a preponderance of clear, ~~and~~
3 10 convincing, ~~and satisfactory~~ evidence, the conduct of
3 11 the defendant from which the claim arose constituted
3 12 willful and wanton disregard for the rights or safety
3 13 of another.

3 14 b. Whether the conduct of the defendant was
3 15 directed specifically at the claimant, or at the
3 16 person from which the claimant's claim is derived.

3 17 c. Whether, by a preponderance of clear and
3 18 convincing evidence, the conduct of the defendant from
3 19 which the claim arose constituted actual malice.

3 20 Sec. ____. Section 668A.1, subsection 2, paragraph
3 21 b, Code 2003, is amended to read as follows:

3 22 b. If the answer or finding pursuant to subsection
3 23 1, paragraph "b", is negative, after payment of all
3 24 applicable costs and fees, an amount not to exceed
3 25 twenty-five percent of the punitive or exemplary
3 26 damages awarded may be ordered paid to the claimant,
3 27 with the remainder of the award to be ordered paid
3 28 into a civil reparations trust fund administered by
3 29 the state court administrator. ~~Attorney fees shall~~
3 30 not be recoverable on any punitive or exemplary
3 31 damages award to be ordered paid to the civil
3 32 reparations trust fund. Funds placed in the civil

3 33 reparations trust shall be under the control and
3 34 supervision of the executive council, and shall be
3 35 disbursed only for purposes of indigent civil
3 36 litigation programs or insurance assistance programs.
3 37 The state court administrator shall file a report with
3 38 the general assembly for each fiscal year, relating to
3 39 the administration of the fund.

3 40 Sec. ____. NEW SECTION. 668A.2 DEFINITIONS.

3 41 As used in this chapter, the following terms shall
3 42 have the following meanings:

3 43 1. "Clear and convincing evidence" means evidence
3 44 which leaves no serious or substantial doubt about the
3 45 correctness of the conclusions drawn from the
3 46 evidence. It is more than a preponderance of
3 47 evidence, but less than beyond a reasonable doubt.

3 48 2. "Malice" means either conduct which is
3 49 specifically intended by the defendant to cause
3 50 tangible or intangible serious injury to the plaintiff
4 1 or conduct that is carried out by the defendant both
4 2 with a flagrant indifference to the rights of the

4 3 plaintiff and with a subjective awareness that such
4 4 conduct will result in tangible serious injury.
4 5 Sec. _____. NEW SECTION. 668A.3 AWARD OF PUNITIVE
4 6 OR EXEMPLARY DAMAGES == PROOF == STANDARD.
4 7 Punitive or exemplary damages shall only be awarded
4 8 where the plaintiff proves by clear and convincing
4 9 evidence that the plaintiff's harm was the result of
4 10 actual malice. This burden of proof shall not be
4 11 satisfied by proof of any degree of negligence,
4 12 including gross negligence.
4 13 Sec. _____. NEW SECTION. 668A.4 PUNITIVE OR
4 14 EXEMPLARY DAMAGE LIMITATIONS.
4 15 1. Except as provided in subsection 2, an award of
4 16 punitive or exemplary damages shall not exceed two
4 17 times the amount of the plaintiff's compensatory
4 18 damages award or two hundred fifty thousand dollars,
4 19 whichever is greater.
4 20 2. If the defendant is a person or a business with
4 21 fifty or fewer full-time employees, an award of
4 22 punitive or exemplary damages shall not exceed two
4 23 times the amount of the plaintiff's compensatory
4 24 damages or two hundred fifty thousand dollars,
4 25 whichever is less.
4 26 Sec. _____. NEW SECTION. 668B.1 CITATION.
4 27 This chapter may be cited as the "Noneconomic
4 28 Damage Awards Act".
4 29 Sec. _____. NEW SECTION. 668B.2 DAMAGE AWARDS.
4 30 In any personal injury action, the prevailing
4 31 plaintiff may be awarded all of the following damages:
4 32 1. Compensation for economic damages suffered by
4 33 the injured plaintiff.
4 34 2. Compensation for the noneconomic damages
4 35 suffered by the injured plaintiff not to exceed the
4 36 greater of either of the following:
4 37 a. Two hundred fifty thousand dollars, except upon
4 38 a finding of especially egregious conduct on the part
4 39 of the defendant.
4 40 b. The amount awarded in economic damages.
4 41 Sec. _____. NEW SECTION. 677.10A PREJUDGMENT
4 42 INTEREST.
4 43 If any offer to confess judgment is made under this
4 44 chapter and is not accepted, and a subsequent trial
4 45 results in a judgment which is less than the offer to
4 46 confess judgment, prejudgment interest shall not be
4 47 calculated or be subject to recovery after the date of
4 48 the offer to confess judgment.>
4 49 #2. By renumbering, redesignating, and correcting
4 50 internal references as necessary.
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5 4 _____
5 4 RON WIECK
5 5 SF 344.304 80
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